

ORIGINAL

ORIGINAL  
40 pm  
9/21/01

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DALE ARNOLD,  
*Petitioner*

v.

FREDERICK FRANK,  
BRADFORD COUNTY DISTRICT  
ATTORNEY and ATTORNEY GENERAL  
OF THE COMMONWEALTH OF  
PENNSYLVANIA,  
*Respondents*

Civil No. 1:00-CV-0775

(Judge Kane)

Magistrate Judge Smyser

FILED  
HARRISBURG

SEP 20 2001

MARY E. D'ANDREA, CLERK  
Per. *[Signature]*  
DEPUTY CLERK

**PETITIONER'S OBJECTIONS TO REPORT  
AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

1. Dale Arnold, an inmate in the Pennsylvania prison system, has filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254.
2. In his petition, Mr. Arnold pursues the following four claims:
  - a. Did the state court err in failing to dismiss the charges due to pre-accusation delay?
  - b. Did the state court err in failing to suppress inculpatory statements made at the visitors room of the county jail?
  - c. Did the state court err in failing to grant post-conviction relief on the claim that counsel was ineffective in failing to object to the testimony of a psychologist?

- d. Did the state court err in denying relief on the post-conviction claim that trial counsel was ineffective for failing to pursue a diminished capacity defense?
3. On September 7, 2001, Magistrate Judge J. Andrew Smyser filed a report recommending that the petition for writ of habeas corpus be denied.
4. Petitioner objects to the report and recommendation of the Magistrate Judge, and asserts that the district court should grant habeas corpus relief on each of the four claims.

#### **Claim One**

5. Petitioner's first claim is that the trial court erred by failing to dismiss the charges against him due to pre-accusation delay.
6. The Magistrate Judge has recommended that relief be denied on this claim (M.J. Rpt., pg. 9).
7. The Magistrate Judge found that the state court correctly applied the relevant legal principles and acted reasonably in finding that there was no constitutional violation (M.J. Rpt., pg. 17).

8. Petitioner objects to the Magistrate Judge's findings and conclusions in this regard, and requests that habeas corpus relief be granted on claim one.

### **Claim Two**

9. Petitioner's second claim is that the state court erred in failing to suppress an inculpatory statement made by the petitioner at the visiting room of the county jail (M.J. Rpt., pg. 17).

10. The Magistrate Judge finds that this claim is barred by Stone v. Powell, 428 U.S. 465 (1979) (M.J. Rpt., pg. 19).

11. In the alternative, the Magistrate Judge finds that the state court correctly applied relevant legal principles and acted reasonably in finding that there was no constitutional violation (M.J. Rpt., pg. 24).

12. Petitioner objects to the Magistrate Judge's findings and conclusions in this regard, and requests that habeas corpus relief be granted on claim two.

**Claim Three**

13. Petitioner's third claim is that trial counsel was ineffective for failing to present a diminished capacity defense (M.J. Rpt., pg. 26).

14. The Magistrate Judge found that the state court correctly applied relevant legal principles and acted reasonably in finding that there was no constitutional violation (M.J. Rpt., pg. 28).

15. Petitioner objects to the Magistrate Judge's findings and conclusions in this regard, and requests that habeas corpus relief be granted on claim three.

**Claim Four**

16. Petitioner's fourth claim is that trial counsel was ineffective for failing to object to trial testimony by a psychologist (M.J. Rpt., pg. 28).

17. The Magistrate Judge found that the state court correctly applied relevant legal principles and acted reasonably in finding that there was no constitutional violation (M.J. Rpt., pg. 30).

18. Petitioner objects to the Magistrate Judge's findings and conclusions in this regard, and requests that habeas corpus relief be granted on claim four.

19. In the course of arguing that counsel was ineffective in failing to object to the testimony of the psychologist, petitioner has noted that the psychologist testified that the victim was "telling the truth."

20. Petitioner has argued that the failure to object on this point underscores trial counsel's ineffectiveness, in that an expert may not usurp the jury's duty to determine witness credibility.

21. The Magistrate Judge concludes that defendant's argument in this regard constitutes a separate claim which is procedurally defaulted (M.J. Rpt., pgs. 31-32).

22. Petitioner objects to the Magistrate Judge's conclusion in this regard, and asserts that his argument is fairly included within issue number four.

23. In the alternative, the Magistrate Judge appears to find that counsel was ineffective in failing to object, but that petitioner was not prejudiced by the ineffectiveness (M.J. Rpt., pg. 32).

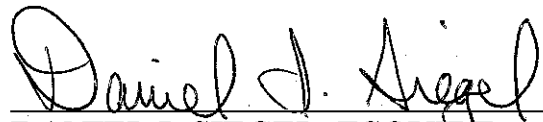
24. Petitioner agrees with the Magistrate Judge's first conclusion, but objects to the second conclusion, asserting that the petitioner was indeed prejudiced by counsel's ineffectiveness.

WHEREFORE, it is respectfully requested that habeas corpus relief be granted.

Respectfully submitted,

Date:

Sept. 20, 2001



DANIEL I. SIEGEL, ESQUIRE  
Asst. Federal Public Defender  
100 Chestnut Street, Suite 306  
Harrisburg, PA 17101  
Attorney for Dale Arnold  
Attorney ID # 38910

### CERTIFICATE OF SERVICE

I, Daniel I. Siegel, of the Federal Public Defender's Office do hereby certify that on this date I served a copy of Petitioner's Objections to Report and Recommendation of the Magistrate Judge by placing the same in the United States mail, first class in Harrisburg, Pennsylvania addressed to the following:

Todd Hinkley, Esquire  
Assistant District Attorney  
Bradford County Courthouse  
301 Main Street  
Towanda, PA 18848

Dale Arnold  
Inmate #AK 5044  
SCI Huntingdon  
1100 Pike Street  
Huntingdon, PA 16654-1112

Date: \_\_\_\_\_

Sept. 20, 2001

Daniel I. Siegel

DANIEL I. SIEGEL, ESQUIRE  
Asst. Federal Public Defender  
Attorney for Dale Arnold